

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code, § 1-307.02), Reorganization Plan No. 4 of 1996, and Mayor's Order 97-42, dated February 18, 1997, hereby gives notice of the adoption of a new section 926 of Title 29 of the District of Columbia Municipal Regulations (DCMR), entitled "Environmental Accessibility Adaptation (EAA) Services". The Director took final action to adopt these rules on August 13, 2003, and the rules will become final upon publication of this notice in the *D.C. Register*. These rules establish standards governing reimbursement by the District of Columbia Medicaid program for EAA services provided by qualified professionals to participants with mental retardation in the Home and Community Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver). These rules also authorize Medicaid reimbursement rates for EAA services for persons with mental retardation and developmental disabilities. Notices of Emergency and Proposed Rulemaking were previously published, on February 21, 2003, at 50 DCR 1776, and on July 11, 2003, at 50 DCR 5591. In response to the second notice the Department received one comment requesting that the lifetime limit of \$10,000 added to the second notice be deleted. The Director has chosen not to adopt that recommendation.

The Centers for Medicare and Medicaid Services (CMS), formerly the federal Health Care Financing Administration has advised the District of Columbia that the maintenance and expansion of EAA services to persons mental retardation and developmental disabilities is essential to the continuation of the Waiver. These rules establish standards governing the provision of EAA services for persons with mental retardation and developmental disabilities.

**Title 29 (Public Welfare) (May 1987) of the District of Columbia Municipal Regulations is amended by adding a new section 926 to read as follows:**

**926 ENVIRONMENTAL ACCESSIBILITY ADAPTATION (EAA) SERVICES**

- 926.1 The Medicaid Program shall reimburse for EAA services for each participant in the Home and Community Based Services Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver) subject to the requirements set forth in this section for persons with mental retardation and developmental disabilities.
- 926.2 EAA services are physical adaptations to a home, required by a client's plan of care that are necessary to ensure the health, welfare, and safety of a

client, or that enable a client to function with greater independence in the home, and without which the client would require institutionalization.

926.3 EAA services may include:

- (a) Installing ramps and grab-bars;
- (b) Widening doorways;
- (c) Modifying bathroom facilities; and
- (d) Installing specialized electric and plumbing systems that are necessary to accommodate medical equipment and supplies.

926.4 EAA services shall:

- (a) Be necessary to ensure the health, welfare, or safety of the client and enable the client to function with greater independence;
- (b) Be limited to a life-time expenditure of ten thousand dollars (\$10,000) per client;
- (c) Not be provided or reimbursed for clients eligible for the Department of Housing and Community Development, Handicap Accessibility Improvement Program (HAIP);
- (d) Be preauthorized;
- (e) Be installed in one of the following:
  - (1) The client's own home;
  - (2) A foster home in which the client resides; or
  - (3) An apartment or other rental property in which the client resides, provided that the participant obtains the property owner's written consent to make environmental accessibility adaptations.
- (f) Not include carpeting, roof repair, central air conditioning, or those adaptations or improvements to the home that are of general utility and have no direct medical or remedial benefit to the client; and
- (g) Not include adaptations that increase the total square footage of the home or facility.

- 925.6 A case manager shall assist all eligible clients to gain access to the HAIP program.
- 926.7 EAA services shall be authorized by the interdisciplinary team and provided in accordance with the client's individual habilitation plan (IHP) or individual support plan (ISP).
- 926.8 Each provider of EAA services shall:
- (a) Be a non-profit organization, home health agency, social service agency, or other business entity;
  - (b) Have a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for EAA services under the Waiver; and
  - (c) Comply with applicable contractor licensing requirements in the District of Columbia or in the jurisdiction where services are provided.
- 926.9 Before approving EAA services, an evaluation is required from a licensed construction analyst or housing inspector that:
- (a) Substantiates that the home is structurally sound;
  - (b) States whether the home can accommodate the EAA and whether there are any construction stipulations; and
  - (c) Recommends how the EAA should be constructed.
- 926.10 EAA services shall be provided consistent with any stipulations or recommendations from the construction analyst or housing inspector, if an evaluation is obtained.
- 926.11 EAA services shall be provided in accordance with the applicable District, State or local building codes.
- 926.12 The reimbursement rates for EAA services shall be as follows:

UNIT (S) OF SERVICE	MAXIMUM UNIT RATE (INCLUDING INSTALLATION)
Specialized electric and plumbing systems	\$2,000
Doorway modifications	\$90 per linear foot

Bathroom Modifications	\$2,000
Ramp	\$90 per linear foot

926.99

**DEFINITIONS**

When used in this section, the following terms and phrases shall have the meanings ascribed:

**Client**-an individual who has mental retardation and developmental disabilities and has been determined eligible to receive services under the Home and Community-Based Waiver for Persons with Mental Retardation and Developmental Disabilities (Waiver).

**Individual Habilitation Plan or IHP**-that plan as set forth in section 403 of the Mentally Retarded Citizens Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code, 7-1304.03).

**Individual Support Plan or ISP**-the successor plan to the individual habilitation plan (IHP) as defined in the court-approved Joy Evans Exit Plan.

## D.C. OFFICE OF PERSONNEL

## NOTICE OF FINAL RULEMAKING

The Director, D.C. Office of Personnel, with the concurrence of the City Administrator, pursuant to Mayor's Order 2000-83, dated May 30, 2000, and in accordance with §§ 906 and 1059 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code §§ 1-609.06 and 1-610.59 (2001)) (the "CMPA"), as amended by the Excepted and Executive Service Domicile Requirement Amendment Act of 2002, effective October 1, 2002 (D.C. Law 14-185; 49 DCR 6073) and § 43 of the Technical Amendments Act of 2002, effective October 19, 2002 (D.C. Law 14-213; 49 DCR 8140) (collectively, hereinafter referred to as the "Domicile Acts"), and approved by Council Resolution 15-142 (deemed approved on June 13, 2003), hereby gives notice that final rulemaking action was taken to adopt the following rules. These rules amend Chapter 3 of the *D.C. Personnel Regulations*, Residency, to implement the provisions of the Domicile Acts, which establish a domicile requirement for persons appointed to the Excepted and Executive Services on or after October 1, 2002, define the term "domicile," provide that the personnel authority may grant waivers of the domicile requirement for appointees to positions in the Excepted and Executive Services presenting exceptional circumstances or for appointees to hard to fill positions, define the terms "hard to fill position" and "exceptional circumstances" for the granting of waivers of the domicile requirement, and provide a list of documents that appointees to the Excepted and Executive Services shall submit to the personnel authority as proof of domicile in addition to the requirements in renumbered § 306.3 of the *D.C. Personnel Regulations*. These rules also establish that a person serving in acting or interim capacity in an Executive Service position shall become subject to the domicile requirement upon confirmation by the Council and promulgation of a Mayor's Order or personnel action appointing him or her to the Executive Service position, and revise and update the chapter in general. No comments were received under the notice of proposed rulemaking published at 50 DCR 5317 (July 4, 2003). Final rulemaking action was taken on August 7, 2003.

## CHAPTER 3

## RESIDENCY

*Chapter 3 of the D.C. Personnel Regulations is amended as follows:*

**300      APPLICABILITY**

- 300.1      The requirements set forth in this chapter shall apply to any applicant for or any person occupying a position in the Career Service, Legal Service, including the Senior Executive Attorney Service, Excepted Service, Management Supervisory Service, or Executive Service as specifically provided herein.

**301 RESIDENCY PREFERENCE**

- 301.1 A person who applies for employment in the Career Service or the Management Supervisory Service and who is a bona fide resident of the District of Columbia may claim a residency preference at the time of application.
- 301.2 An employee who applies for a competitive promotion in the Career Service or the Management Supervisory Service and who is a bona fide resident of the District of Columbia may claim a residency preference at the time of application.
- 301.3 When residency preference is claimed pursuant to § 301.1 or 301.2, proof of bona fide residency shall be submitted upon selection for the position.
- 301.4 Except as provided in § 301.14, an applicant for a position in the Career Service or the Management Supervisory Service who claims a residency preference and is selected for the position shall agree in writing at the time of appointment to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment.
- 301.5 Except as provided in § 301.14, an employee who claims a residency preference in applying for a competitive promotion and is selected for the position shall agree in writing no later than the day before the effective date of appointment to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment.
- 301.6 The requirement to maintain bona fide District residency as provided in §§ 301.4 and 301.5 shall be applicable to any applicant or employee who claims a residency preference and is selected for the position on or after March 16, 1989.
- 301.7 Failure to maintain bona fide District residency as provided in § 301.4, 301.5, or 301.6 shall result in forfeiture of employment.
- 301.8 Except as provided in § 301.9, residency preference shall be given by adding five (5) points to the rating and ranking score of each qualified applicant claiming or entitled to residency preference.
- 301.9 When all applicants are employees of the District government or when there are no qualified outside candidates who claim preference, no points shall be afforded to any qualified applicant who claims or is entitled to preference.
- 301.10 To fill a position in the Career Service or the Management Supervisory Service where two (2) or more applicants are equally qualified, the applicant with residency preference shall be listed and selected ahead of the non-preference candidate, with the determination as to equal qualifications made as follows:
- (a) For an unassembled examining procedure, all applicants with the same categorical ranking; and
  - (b) For an assembled examining procedure, all applicants with the same numerical rating.

- 301.11 Each applicant for a position in the Career Service or the Management Supervisory Service shall be informed in writing by the personnel authority of the provisions of §§ 301.1 through 301.10.
- 301.12 Each person who claims a residency preference and who is selected for a position in the Career Service or the Management Supervisory Service shall be informed, in writing, by the personnel authority, no later than the effective date of the appointment, of the requirement to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment and that failure to do so shall result in forfeiture of employment.
- 301.13 For the purpose of this section, in order to be a bona fide resident of the District of Columbia, a person must maintain a place of abode in the District of Columbia as his or her actual, regular, and principal place of residence and must have the intent to remain in the District for a minimum of five (5) consecutive years from the date of appointment.
- 301.14 Notwithstanding any other provision of this chapter, any person who meets either of the following criteria shall be granted a residency preference, as provided in § 301.15, upon application for a competitive promotion in the Career Service or the Management Supervisory Service:
- (a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or
  - (b) Pursuant to the provisions of § 7 of the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act, approved November 8, 1984 (P.L. 98-621; 98 Stat. 3376; 24 U.S.C. § 225e(b)) (P.L. 98-621), any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.
- 301.15 The entitlement to a residency preference pursuant to § 301.14 shall be granted if at least one (1) of the qualified applicants for the position has claimed a residency preference.
- 301.16 Each applicant for appointment or promotion shall be required to indicate at the time of application his or her claim or entitlement to residency preference in a manner prescribed by the Mayor.
- 301.17 The provisions of this section shall apply to Legal Service attorneys who are appointed competitively and who claim a residency preference at the time of application for positions in the Legal Service other than the Senior Executive Attorney Service.

**302 RESIDENCY PREFERENCE IN EMPLOYMENT FOR ATTORNEYS IN THE EXCEPTED SERVICE**

- 302.1 A person who applies for employment as an attorney in the Excepted Service and who is a bona fide resident of the District of Columbia may claim a residency preference at the time of application.

- 302.2 Each applicant for appointment as an attorney in the Excepted Service shall be required to indicate at the time of application his or her claim to residency preference.
- 302.3 When residency preference is claimed pursuant to § 302.2, proof of bona fide residency shall be submitted upon selection for the position.
- 302.4 Except as provided in § 302.8, an applicant who claims a residency preference and is selected for the position shall agree in writing to maintain bona fide District residency for a period of five (5) consecutive years from the effective date of appointment.
- 302.5 Any person who is appointed as an attorney in the Excepted Service after claiming residency preference and who thereafter fails to maintain bona fide District residency shall forfeit his or her position.
- 302.6 When two (2) or more applicants for one (1) attorney position in the Excepted Service are equally qualified, the personnel authority shall offer the position to the applicant or applicants claiming a residency preference before offering the position to an applicant not claiming a residency preference.
- 302.7 Each applicant for an attorney position in the Excepted Service shall be informed of the residency preference system as described in this section.
- 302.8 Notwithstanding any other provision of this chapter, any person who was employed by the District of Columbia government on December 31, 1979 and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date shall be granted a residency preference upon application for an attorney position in the Excepted Service.

### **303 RESIDENCY PREFERENCE IN REDUCTION IN FORCE**

- 303.1 Preference shall be given in a reduction in force conducted pursuant to Chapter 24 of these regulations by adding three (3) years of service credit to the service computation date of all of the following:
- (a) Each competing employee who is a bona fide resident of the District of Columbia;
  - (b) Each competing employee who is not a resident of the District of Columbia, but who was hired prior to January 1, 1980 and has continued employment without a break in service of one (1) workday or more since that date; and
  - (c) Each competing employee who is not a resident of the District of Columbia, but who was a former employee of the U.S. Department of Health & Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has continued employment without a break in service of one (1) workday or more since that date.
- 303.2 When the provisions of this section conflict with the provisions of an effective collective bargaining agreement, the provisions of the collective bargaining agreement shall govern to the extent that there is a conflict.



**304 SENIOR EXECUTIVE ATTORNEY SERVICE RESIDENCY REQUIREMENT**

- 304.1 Any attorney appointed to the Senior Executive Attorney Service under the authority of D.C. Official Code § 1-608.51 *et seq.* (2001) shall:
- (a) Be a bona fide resident of the District of Columbia at the time of appointment and remain a District resident for the duration of employment; or
  - (b) Become a bona fide resident of the District of Columbia within one hundred eighty (180) days of his or her appointment and remain a District resident for the duration of employment.
- 304.2 Each person appointed to the Senior Executive Attorney Service shall be informed in writing by the personnel authority of the residency provisions of §§ 304.1 and 304.4 before the effective date of appointment.
- 304.3 On the date of appointment, each person appointed to the Senior Executive Attorney Service shall be informed in writing by the personnel authority of the residency provisions of §§ 304.1 and 304.4.
- 304.4 Failure to meet the residency requirement set forth in § 304.1 shall result in forfeiture of employment.
- 304.5 The residency requirement set forth in this section shall not apply to any person appointed to the Senior Executive Attorney Service who meets either of the following criteria:
- (a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or
  - (b) Pursuant to the provisions of § 7 of P.L. 98-621, any former employee of the U.S. Department of Health and Human services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.
- 304.6 Upon request, the Director of Personnel may waive the residency requirement set forth in this section for a new hire appointed to a hard to fill position in the Senior Executive Attorney Service, as follows:
- (a) The Corporation Counsel, another subordinate agency head, and any independent personnel authority subject to D.C. Official Code §§ 1-608.51 *et seq.* (2001), may request a waiver of the residency requirement to the Director of Personnel for a new hire appointed to a hard to fill position in the Senior Executive Attorney Service.
  - (b) For the purposes of this section, the term "hard to fill position" shall have the meaning ascribed in § 399 of this chapter, except that a Senior Executive Attorney Service position shall be designated as hard to fill only by the Director of Personnel.

- (c) Any request for a waiver shall be in writing, made and granted before the effective date of appointment of the candidate for the waiver.
- (d) Any request for a waiver shall include appropriate documentation and information to demonstrate that the position is hard to fill and justify consideration of the request. Appropriate documentation and information demonstrating that the position is hard to fill shall include but not be limited to:
  - (1) A statement containing the qualification requirements for the position, and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard to fill;
  - (2) A copy of the position description or statement of duties for the position;
  - (3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;
  - (4) Copies of any vacancy announcements and/or other types of advertisement issued and published for the position;
  - (5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;
  - (6) The employment application or résumé of the person for which the waiver is being requested; and
  - (7) A statement explaining the reasons why the waiver should be granted.

304.7 Upon receipt of a request for a waiver pursuant to this section, the Director of Personnel shall promptly determine whether to grant the waiver and notify the requestor of the decision, in writing.

304.8 Any employee occupying a position in the Senior Executive Attorney Service for which a waiver of the residency requirement has been granted pursuant to § 304.6 shall be exempt from the residency requirement set forth in this section for as long as he or she continues to occupy that position.

**305 EXCEPTED SERVICE AND EXECUTIVE SERVICE DOMICILE REQUIREMENT**

305.1 Except as provided in §§ 305.8 and 305.9, any person who is appointed to a position in the Excepted Service, excluding attorneys in that service, or the Executive Service on or after October 1, 2002 shall meet one (1) of the following criteria:

- (a) Be a domiciliary of the District of Columbia at the time of appointment and maintain such domicile for the duration of his or her employment; or

- (b) Become a domiciliary of the District of Columbia within one hundred eighty (180) days of the date of his or her appointment and maintain such domicile for the duration of his or her employment.
- 305.2 Failure to meet the domicile requirement set forth in § 305.1 shall result in forfeiture of employment.
- 305.3 Notwithstanding the provisions of §§ 305.1 and 305.2, a person nominated to serve in an acting or interim capacity in an Executive Service position or appointed to an Excepted Service position requiring confirmation by the Council shall not become subject to the domicile requirement until after confirmation by the Council and promulgation of a Mayor's Order or a personnel action appointing him or her to the position. Specifically, such person shall become a domiciliary of the District of Columbia within one hundred eighty (180) days from the date specified in the Mayor's Order as the date of appointment, or from the effective date of the personnel action processed after Council confirmation to appoint him or her to the position, whichever occurs first. The personnel authority shall inform each employee to whom this subsection applies, in writing, of the exact date by which he or she shall meet the domicile requirement.
- 305.4 Except as provided in §§ 305.8 and 305.9, any employee in the Excepted or Executive Service who was hired prior to October 1, 2002, and who was required to be or become a bona fide resident of the District of Columbia within one hundred eighty (180) days of appointment and maintain that residency or forfeit employment, shall continue to be bound by the residency requirement that was in effect before October 1, 2002.
- 305.5 Each appointee to a position in the Excepted or Executive Service shall be informed in writing by the personnel authority of the provisions of §§ 305.1 and 305.2 before the effective date of appointment.
- 305.6 On the date of appointment, each person appointed to the Excepted or Executive Service shall be informed in writing by the personnel authority of the provisions of §§ 305.1 and 305.2.
- 305.7 District of Columbia domicile shall be proven by affirmative acts by an Excepted and Executive Service employee who is not a District domiciliary at the time of appointment. Proof of District of Columbia domicile shall be established and certified by meeting the requirements in §§ 306.4 and 306.6.
- 305.8 The domicile requirement set forth in this section shall not apply to any person who meets either of the following criteria:
  - (a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or
  - (b) Pursuant to the provisions of § 7 of P.L. 98-621, any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

- 305.9 The Director of Personnel or independent personnel authority may grant waivers of the domicile requirement for persons appointed on or after October 1, 2002 to positions in the Excepted or Executive Service pursuant to D.C. Official Code §§ 1-609.03(a)(1) or (2) (2002 Supp.) or 1-610.51 (2001) presenting exceptional circumstances or for positions that are hard to fill. The provisions for the granting of waivers are as follows:
- (a) An agency head or the Mayor in the case of an Executive Service appointee, may request a waiver of the domicile requirement for a person as described in § 305.1 by submitting written justification to the Director of Personnel or independent personnel authority that the position is hard to fill. The request shall include appropriate documentation and information to demonstrate that the position is hard to fill and justify consideration of the request. Appropriate documentation and information shall include but not be limited to:
    - (1) A statement containing the qualification requirements for the position, and explaining the uniqueness of the duties and responsibilities of the position and the unusual combination of highly specialized qualification requirements which make it hard to fill;
    - (2) A copy of the position description or statement of duties for the position;
    - (3) A copy of the recruitment plan for the position or a statement explaining the recruitment plan;
    - (4) Copies of any vacancy announcements and/or other types of advertisement issued and published for the position;
    - (5) A statement detailing any special outreach and recruitment efforts undertaken in trying to fill the position and the date on which recruitment efforts to fill the position began;
    - (6) The employment application or résumé of the person for which the waiver is being requested; and
    - (7) A statement explaining the reasons why the waiver should be granted.
  - (b) The Director of Personnel or independent personnel authority may designate an Excepted Service position established pursuant to D.C. Official Code § 1-609.03(a)(1) or (2) (2002 Supp.) as a hard-to-fill position and, subsequent to that determination, may waive the domicile requirement for any individual appointed to such a position. Under no circumstance shall a position be designated as hard-to-fill pursuant to this subsection after the position has been filled and an individual encumbers it.
  - (c) Any employee occupying a position for which a waiver of the domicile requirement has been granted pursuant to § 305.9(b) shall be exempt from the domicile requirement for as long as he or she continues to occupy that position.
  - (d) An agency head hiring a non-District domiciliary presenting exceptional circumstances to a position in the Excepted Service pursuant to D.C. Official Code § 1-609.03(a)(1) or (2) (2002 Supp.), or the Mayor in the case of a similarly situated individual being

hired to a position in the Executive Service pursuant to D.C. Official Code § 1-610.51 (2001), may present such exceptional circumstances to the Director of Personnel or independent personnel authority in writing before the effective date of appointment. The request shall include appropriate documentation to substantiate the claim of exceptional circumstances.

- (e) Any waiver granted pursuant to §§ 305.9(a) or (d) shall remain in effect only for as long as the employee occupies the position for which the waiver was granted.

305.10 Upon receipt of a request for a waiver of the domicile requirement pursuant to this section, the Director of Personnel or independent personnel authority shall promptly determine whether to grant the waiver and notify the agency head or the Mayor of the decision, in writing, prior to the effective date of the appointment. Under no circumstance shall a waiver of the domicile requirement be granted after the effective date of appointment.

305.11 A waiver of the residency requirement granted to an Excepted Service employee before October 1, 2002 shall remain in effect for as long as the employee occupies the position for which the waiver of the residency requirement was granted.

**306 PROOFS, CERTIFICATION, AND DOCUMENTATION OF DISTRICT RESIDENCY**

306.1 The provisions of this section apply to any person required to submit proof of bona fide District residency or, in the case of persons appointed to the Excepted and Executive Services on or after October 1, 2002, proof of District domicile.

306.2 Documentation, certification, and affidavits required by this section shall be in a form prescribed by the personnel authority.

306.3 No single document is conclusive in order to determine bona fide residency; however, the following may be considered:

- (a) Voter registration, if any;
- (b) Motor vehicle registration, if any;
- (c) Motor vehicle driver permit, if any;
- (d) Withholding and payment of individual income taxes including:
  - (1) Copies of District of Columbia tax returns certified by the D.C. Office of Tax and Revenue; and
  - (2) Copies of certified federal tax returns filed with the U.S. Internal Revenue Service;
- (e) Certified deed or lease or rental agreement for real property;
- (f) Cancelled checks or receipts for mortgage or rental payments; and

- (g) Utility bills and payment receipts.
- 306.4 When a person is required to submit documents to support a claim of bona fide District residency, a minimum of four (4) of the documents set forth in § 306.3 shall be submitted to the personnel authority.
- 306.5 For each Excepted or Executive Service appointee subject to the domicile requirement pursuant to § 305, proof of District domicile or of the intent of the appointee to change his or her domicile to the District of Columbia and acquire a principal place of residence in the District of Columbia shall include the following documents in addition to a minimum of four (4) of the documents set forth in § 306.3:
- (a) A copy of a change of address form filed with the United States Postal Service containing the address of the employee's principal place of residence in the District of Columbia;
  - (b) A copy of an executed contract of sale for the real property that was the employee's principal place of residence at the time of accepting the employment, if the employee owns a principal place of residence outside of the District of Columbia; or a copy of a change in the public records of the state where the employee was domiciled to show that the residence outside of the District of Columbia is no longer the employee's principal place of residence;
  - (c) Copies of utility bills, including electric, gas, telephone, cable, water or other residency bills associated with occupying real property in the District of Columbia, where the billing and mailing address are the same as the principal place of residence;
  - (d) A copy of a bank account statement in the District of Columbia in the name of the employee;
  - (e) A copy of District of Columbia and federal income tax returns that use the District of Columbia address which is the employee's principal place of residence;
  - (f) Copies of professional dues statements mailed to the employee's principal place of residence in the District of Columbia;
  - (g) A sworn affidavit from the employee that the administration of the employee's estate is subject to District of Columbia probate and estate taxes;
  - (h) Copies of credit card or brokerage account statements mailed to the employee's principal place of residence in the District of Columbia;
  - (i) Copies of automobile, health, and life insurance contracts for the employee based upon the employee's principal place of residence in the District of Columbia;
  - (j) Copies of mortgage statements for the employee's principal place of residence in the District of Columbia, or an executed lease for the employee's principal place of residence in the District of Columbia; and

- (k) A sworn affidavit from the employee that the employee's income, from any source, is subject to District of Columbia withholding tax and taxation.
- 306.6 An Excepted or Executive Service employee subject to the domicile requirement shall fulfill the requirements of § 306.5 by filing a sworn affidavit with the Director of Personnel or independent personnel authority that affirms that the employee has undertaken affirmative acts to comply with each requirement, and when the requirement is not applicable, the reasons why the requirement does not apply.
- 306.7 A person who claims a residency preference as provided in § 301.1 or 301.2 and who is selected for the position shall, on or before the effective date of appointment or promotion, sign a statement that certifies the following:
- (a) That the person has received written notification of the residency preference requirement;
  - (b) That the person has read the notice, has been given an opportunity to ask questions about the residency preference requirement, and understands the residency preference requirement;
  - (c) That the person understands that failure to maintain bona fide residency in the District of Columbia for a period of five (5) consecutive years from the effective date of appointment will result in forfeiture of the position; and
  - (d) That the place of residence stated in the certification is the person's actual, regular, and principal place of residence.
- 306.8 A person who is appointed to a position in the Excepted or Executive Services on or after October 1, 2002 and who claims that he or she is a District domiciliary shall sign a statement on or before the effective date of appointment to the position, whether it is an initial appointment or other appointment, which certifies the following:
- (a) That the person has received written notification of the domicile requirement;
  - (b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;
  - (c) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position; and
  - (d) That the place of residence stated in the certification is the person's domicile.
- 306.9 Unless exempted pursuant to §§ 305.8 and 305.9, each Excepted or Executive Service appointee or employee who is not a domiciliary of the District of Columbia on the date of appointment to a position, whether it is an initial appointment or other appointment, shall sign a statement when appointed, which certifies the following:
- (a) That the person has received written notification of the domicile requirement;

- (b) That the person has read the notice, has been given an opportunity to ask questions about the domicile requirement, and understands the domicile requirement;
  - (c) That the person intends to become a domiciliary of the District of Columbia within one hundred eighty (180) days of the date of appointment;
  - (d) That the person understands that failure to become a domiciliary of the District of Columbia within one hundred eighty (180) days from the date of appointment shall result in forfeiture of the position; and
  - (e) That the person understands that failure to remain a District domiciliary for the duration of employment shall result in forfeiture of the position.
- 306.10 Each Excepted or Executive Service appointee subject to the requirements of § 305.1 who is not a domiciliary of the District of Columbia on the date of appointment shall provide to the personnel authority, within one hundred eighty (180) days of the date of appointment, sufficient documentation, as provided in §§ 306.3, 306.5 and 306.6, which demonstrates that he or she has become a domiciliary of the District of Columbia.
- 306.11 Each agency head or independent personnel authority shall designate an agency representative to fulfill the requirements specified in §§ 306.12, 306.13, 307, and 309 of this chapter.
- 306.12 Between November 1 and November 30 of each year after the first year of employment, up to the end of the required period of bona fide District residency or District domicile, each employee required to be a bona fide resident or District domiciliary shall submit to the agency representative an affidavit which certifies at least the following:
- (a) That he or she is currently, and has been continuously for the preceding twelve-month (12-month) period, in compliance with the provisions of the residency or domicile requirements, as applicable;
  - (b) The home address(es) for the preceding twelve-month (12-month) period;
  - (c) The address used on the individual income tax return filed with the District of Columbia during the preceding twelve-month (12-month) period; and
  - (d) The address used on the individual income tax return filed with the United States Internal Revenue Service during the preceding twelve-month (12-month) period.
- 306.13 The agency representative, at a time he or she shall determine, but within one (1) year following the date on which the employee became subject to the residency or domicile requirements, shall request, and the employee shall provide, sufficient documentation to demonstrate that the employee is in compliance.
- 307 RESIDENCY DETERMINATION HEARINGS**
- 307.1 Whenever the agency head has reasonable cause to believe that an employee of the agency is not in compliance with the residency or domicile requirements, the agency head shall issue to the employee a written notice to show cause why his or her employment should not be



forfeited. The agency head shall provide a copy of the written notice to the Director of Personnel or independent personnel authority.

- 307.2 Any written notice to show cause why employment should not be forfeited shall be issued only during the period of time that the employee is required to maintain bona fide District residency or be a District domiciliary.
- 307.3 If the employee intends to present documents, facts, and circumstances to demonstrate compliance with the residency or domicile requirements, a pre-hearing conference and an evidentiary hearing on the merits shall be conducted by the D.C. Office of Personnel or independent personnel authority.
- 307.4 The full evidentiary hearing shall follow the pre-hearing conference by a period of not less than ten (10) days.
- 307.5 The Director of Personnel or independent personnel authority shall designate a hearing officer, who shall conduct residency determination hearings.
- 307.6 The respondent employee may be represented at the pre-hearing conference and hearing by counsel if he or she so chooses.
- 307.7 The agency representative shall present the facts and circumstances which led to the issuance of the show-cause notice.
- 307.8 The respondent employee shall have an opportunity to rebut the facts and circumstances presented by the agency representative, to cross-examine any witnesses called by the agency, and to present evidence that demonstrates compliance with the residency or domicile requirements.
- 307.9 If the hearing officer determines that the agency representative has established reasonable cause to believe that the employee is not in compliance with the residency or domicile requirements, then the burden of persuasion shall shift to and be borne by the respondent employee.
- 307.10 The agency representative shall have an opportunity to cross-examine the respondent employee as well as any witnesses called by the respondent employee.
- 307.11 The standard of proof in a residency or domicile determination case shall be by a preponderance of the evidence.
- 307.12 After the hearing, the hearing officer shall prepare a proposed written determination within a reasonable period of time and shall serve a copy of the proposed determination on the Director of Personnel or independent personnel authority and on the respondent employee.
- 307.13 The proposed determination of the hearing officer shall be based solely on the record of the evidentiary hearing.
- 307.14 The employee shall have a period of ten (10) days from the receipt of the proposed determination to present written exceptions to the Director of Personnel or independent

personnel authority in response to a proposed determination of noncompliance with the residency or domicile requirements. Exceptions must be based solely on the record of the evidentiary hearing.

- 307.15 The Director of Personnel or independent personnel authority shall review the record and make the final decision on compliance with the residency or domicile requirements.
- 307.16 The final decision of the Director of Personnel or independent personnel authority shall be issued to the employee and the agency head in writing.
- 307.17 A final decision by the Director of Personnel or independent personnel authority of noncompliance with the residency domicile requirements shall result in forfeiture of employment by the employee.

**308 METROPOLITAN POLICE AND FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENTS**

- 308.1 Notwithstanding the provisions of § 301, any officer or member of the Metropolitan Police Department or of the Fire and Emergency Medical Services Department in the Career Service who was employed prior to January 1, 1980, and who has not had a break in service, shall continue to be subject to the provisions of D.C. Official Code § 5-105.08 (2001).
- 308.2 Notwithstanding the provisions of § 301, any officer or member of the Metropolitan Police Department or of the Fire and Emergency Medical Services Department in the Career Service employed on or after January 1, 1980, shall be subject to the requirements of D.C. Official Code § 5-105.08 (2001).

**309 REPORTING REQUIREMENTS**

- 309.1 By November 1 of each year, each personnel authority shall submit to the Office of Tax and Revenue a listing which shall include the name, social security number, and employing agency of each person subject to the residency or domicile requirements who was appointed prior to January 1 of the current year.
- 309.2 The Office of Tax and Revenue shall provide, on a date specified by the Mayor, each personnel authority with information on the filing status of individual income tax returns for persons identified under § 309.1 for the returns filed in that calendar year. The information provided by the Office of Tax and Revenue shall include the mailing address used in filing the tax return.
- 309.3 Each personnel authority shall distribute the information received under § 309.2 to the agencies subject to its personnel authority.
- 309.4 The information received by the agency under this section shall be used by the agency in conjunction with its overall monitoring responsibility pursuant to § 306.11.
- 309.5 Agencies of the District of Columbia government having regulatory or administrative authority relating to any factor that may be used in making a determination of bona fide residency or District of Columbia domicile shall provide the agency representative with

information that may be requested. Information requested and released under this section shall be in accord with applicable statutory privacy restrictions.

### 399 DEFINITIONS

399.1 For the purposes of this chapter, the following terms have the meaning ascribed:

**Agency**—the meaning set forth in D.C. Official Code § 1-603.01(1) (2002 Supp.), but including boards and commissions as described in D.C. Official Code § 1-603.01(2) (2002 Supp.), and excluding the courts.

**Agency head**—the highest ranking executive official of an agency.

**Agency representative**—any person(s) designated by the agency head to receive and review factors and documents, conduct investigations, and represent the agency at residency preference or District of Columbia domicile determination hearings.

**Bona fide resident**—any person who maintains a place of abode in the District of Columbia as his or her actual, regular, and principal place of residence.

**Claim**—completion of the Residency Preference for Employment form, DC-2000RP, by a bona fide District resident at the time of application for employment or a competitive promotion, who agrees in writing that, if selected, he or she will maintain District residency for five (5) consecutive years from the date of appointment or promotion.

**Competitive promotion**—the change of an employee to a position at a higher grade or class level within the same job classification system and pay schedule, or to a position with a higher representative rate in a different job classification system and pay schedule, as a result of open competitive procedures pursuant to Chapters 8 and 38 of these regulations.

**Counsel**—an attorney at law who may be chosen by an employee to represent the employee in a residency or District of Columbia domicile determination adjudication.

**Days**—calendar days, unless otherwise stated. In computing a period of time prescribed by these regulations, the day of the action or event triggering the count is not included in the computation. The last day of the period shall not be a Saturday, Sunday, or legal holiday, but shall be the end of the next day which is not a Saturday, Sunday, or legal holiday.

**Director of Personnel**—the Director of the D.C. Office of Personnel, or his or her designee.

**District domicile**—physical presence in the District of Columbia; and an intent to abandon any and all former domiciles and remain in the District of Columbia for the duration of an Excepted or Executive Services appointment.

**Entitlement**—when at least one of the qualified applicants for a position has claimed a residency preference, any qualified candidate who meets either of the following criteria is automatically granted a residency preference:

- (a) Any person who was employed by the District of Columbia government on December 31, 1979, and who is still employed by the District of Columbia government without having had a break in service of one (1) workday or more since that date; or
- (b) Pursuant to the provisions of § 7 of P.L. 98-621, any former employee of the U.S. Department of Health and Human Services at St. Elizabeths Hospital who accepted employment with the District government without a break in service effective October 1, 1987, and who has not had a break in service since that date.

**Exceptional circumstances** – conditions or facts that are uncommon, deviate from or do not conform to the norm, or are beyond willful control, which are presented to the personnel authority by an agency head or the Mayor, when hiring an individual to fill a position in the Excepted or Executive Services, and which shall be considered by the personnel authority in determining the reasonableness of granting a waiver of the domicile requirement to that individual.

**Forfeiture**—the loss of employment as a result of the failure of the employee to comply with the provisions of the residency preference or domicile requirements.

**Hard to fill position** – a position so designated by the personnel authority on the basis of demonstrated recruitment and retention problems inherent in the position due to the uniqueness of the duties and responsibilities and the unusual combination of highly specialized qualification requirements for the position.

**Mayor**—the Mayor of the District of Columbia or his or her designee.

**Personnel authority**—an individual or entity authorized by D.C. Official Code § 1-604.06 (2001) to implement personnel rules and regulations for employees of an agency or group of agencies of the District of Columbia; or persons delegated that authority by that individual or entity.

**Preponderance of evidence**—that which is more convincing to the mind—more likely than not. That amount (weight) of evidence which convinces as to its truthfulness.

**Reasonable cause**—that composite of facts from which a reasonably prudent person might determine that an employee is not in compliance with the residency preference or domicile requirements.

**Residency preference**—credit that is given as follows:

- (a) Additional points and/or priority placement on a selection register afforded to a qualified applicant who claims or is entitled to preference; or
- (b) Additional years of service given in the event of a reduction in force to each bona fide resident and each non-resident employee hired prior to January 1, 1980.